

If transactions for the Licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

September 8, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 4, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We request a general letter ruling on whether the attached license of software is exempt from sales & use tax. This relates to invoices from 2001 to 2003 where a customer was charged sales tax for the specified license of software. We have researched this under Illinois Regulation, 86 Ill. Adm. Code 130.1935 and noticed it states five requirements for the license of software to be exempt from sales & use tax. I believe it has met these requirements, but need your decision on this matter. I have listed the requirements below and compared it with the license agreement.

Per Illinois Regulation, 86 Ill. Adm. Code 130.1935, the license of software is not a taxable retail sale if:

1. It is evidenced by a written agreement signed by the licensor and the customer;

The software license meets the first requirement because there is a signed, written contract.

2. it restricts the customer's duplication and use of the software;

This has been met due to Sec 1.1.2 and 1.4 of the contract. The contract states a licensee is only granted the right to use the program for internal users and certain external users. Section 1.4 describes certain times when duplicating the program would be permissible.

3. it prohibits the customer from licensing, sublicensing, or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;

Regarding the licensing, sublicensing or transferring the software is explained in Section 8 of the contract, whereas it explains the licensee shall have no right to sell/rent out/lend or in any other way transfer or assign the right to use the program.

4. the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor;

This requirement is met within Section 1.4 due to the licensor granting the permission to make copies for archival or backup purposes.

5. the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

This final item is met in Section 9 of the contract whereas whether the license is terminated by the licensee or ABC, the licensee shall promptly cease using the program and promptly delete and erase and destroy the program.

If you have questions or concerns regarding this matter, please contact me.

DEPARTMENT'S RESPONSE:

As pointed out in your request, the issue of taxation of software licenses may be found at 86 Ill. Adm. Code 130.1935. As stated above, general information letters are used to direct taxpayers to the Department's regulations and other sources of information for general guidance.

We are unable in the context of a general information letter to provide you with a specific answer in regards to this specific contract. Please refer to Section 130.1935(a)(1) to determine if your license agreement meets the requirements as set out under that Section.

Should you wish to submit this matter for a private letter ruling please refer to 2 Ill. Adm. Code 1200.110 for the proper requirements under that section.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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